

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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METRO FUEL LLC, a Delaware limited
liability company,

No. C07-6067 JSW

Plaintiff,

vs.

CITY OF SAN FRANCISCO, a municipal corporation,
COUNTY OF SAN FRANCISCO, a subdivision of the
State of California, CITY AND COUNTY OF SAN
FRANCISCO, a chartered California city and county.

Defendants.

-----X
DECLARATION OF POLK & CLAY LIQUOR

JENNIFER LENH declares under penalty of perjury, pursuant to 28 U.S.C. §
1746, that the following is true and correct:


1. I submit this declaration in support of the motion by Plaintiff Metro Fuel LLC for a preliminary injunction in this case.
2. I am the owner of POLK AND CLAY LIQUOR the entity that rents the property located at 1700 Polk Street in San Francisco. In accordance with and under the terms of my lease with the real estate owner of 1700 Polk Street, I entered into a lease agreement between Metro Fuel and POLK and CLAY LIQUOR and Metro Fuel has placed and operates one panel sign on this property.
3. On or about February 27th, 2008, the City of San Francisco issued a violation to YORK LON TOM QTIP TRUST the property owner, alleging that Metro Fuel's panel sign is illegal and purportedly imposing a fine of \$100 per day. These fines are accruing

daily and are approximately \$8,500 at this time. A true and correct copy of this notice of violation is attached to this declaration as Exhibit A.

4. I notified Metro Fuel of this notice of violation and was informed that Metro Fuel had filed this lawsuit in federal court challenging the constitutionality of the advertising sign restrictions at issue. I have asked that Metro Fuel file for a permit so that I can stop the violations from accruing and was informed that the City of San Francisco will not accept applications for permits for panel signs. I informed Metro Fuel that I am very concerned about the notice of violation and the steep fines that the City claims are accruing. Metro Fuel explained that there would be a court appearance in the federal court action on July 11, 2008, and that Metro Fuel would be asking the Court to issue an injunction barring the City from acting on the notice of violation during the pendency of the lawsuit.

5. I informed Metro Fuel that if this issue is not resolved shortly, I will have no choice but to remove the panel sign from my property as I cannot afford to pay these fines and I do not want to ruin my relationship with my landlord under the terms of my real estate lease. Polk and Clay Liquors is my family business and it is how I support my family. I cannot risk being evicted for a violation being filed against my landlord's property. I understand that there is strong legal precedent supporting Metro Fuel's constitutional claim, but I cannot risk the possibility that the City's notice of violation will be upheld and that the \$100 per day penalty will later be enforced. Unless the Court intervenes soon, the panel sign will be removed and I will demand reimbursement for the removal costs from Metro Fuel in addition to the cost of the violations as well as the rent due under the remainder of my lease agreement with Metro Fuel.

Dated: July 15, 2008
San Francisco, California



POLK and CLAY LIQUOR

Exhibit A



SAN FRANCISCO PLANNING DEPARTMENT

Notice of Violation General Advertising Sign

Date: February 27, 2008
Case No.: 9352
Site Address: 1700 Polk Street
Sign ID: KAB84 (6x4 southwest-facing wall sign)
Zoning: Polk Street Neighborhood Commercial District
Block/Lot: 0620/015

Staff Contact: Jonathan Purvis - 415.558.6371
Jonathan.purvis@sfpd.org

Property Owner:
York Lon Tom Qip Trust
611 Bay Street #3
San Francisco, CA 94133

Sign Company:
Unknown

1850 Mission
Suite 400
San Francisco
CA 94103-247

Reception:
415.558.6371

Fax:
415.558.6400

Planning
Information:
415.558.6371

The Planning Department has recently inspected the above-referenced property and has determined that one or more violations of the Planning Code exist on the site with respect to the general advertising sign referenced above. The exact nature of the violations is detailed below:

DESCRIPTION OF VIOLATION

There is no record of a building permit being issued for the above-referenced general advertising sign. This is a violation of Planning Code Section 401. Building Permit Application No. 20011731/045 was issued for a business sign, but the subject sign is used for general advertising. You must address this notice by providing evidence of an approved permit to install a general advertising sign at that site or by applying for a building permit to remove the sign.

Timeline to respond.

Under Section 610 of the Planning Code, the responsible party has forty-five (45) days from the date postmarked on this notice or date of hand-delivery to file an application for a permit to remove the sign or request reconsideration of this Notice of Violation before an Administrative Law Judge.

Penalties

Failure to act on this Notice of Violation within the time period specified in this letter will result in a referral to the City Attorney for further action, including the assessment of a civil penalty on the 45th day after the date of the notice at a rate that is based on the size of the sign. Furthermore, Section 176(c)2 of the Planning Code states that any violation authorized in Section 610, of not less than \$200 per day, shall be assessed and may be continued until the violation is corrected. If the above violation involves Section 601 of the Planning Code, an additional penalty may be imposed by the Planning Director.

Notice of Violation

~~Building permit to remove or correct violation.~~

You have thirty (30) days from the filing of the building permit to either (1) obtain Approval or Certificate of Completion from the Department of Building Inspection (DBI), or (2) retain a copy from the sign until such approval from DBI is obtained. If the required approvals have not been obtained within this time period, penalties will accrue at the above referenced amount of \$100 per day.

~~To avoid penalties, we strongly suggest that you send a photo (preferably one taken in the staff prison shown at the top of this notice to confirm when the violation has been abated.~~

REQUEST FOR RECONSIDERATION HEARING

Written request for hearing and fees.

If you seek reconsideration of this Notice of Violation, you must complete a Request for Reconsideration application, which is available online at www.sfplanning.org. The request must include evidence that demonstrates why this Notice of Violation was issued in error or why the administrative penalties assessed were in error. You must enclose a check for \$3,400 payable to the Planning Department for the initial hearing fee.

Other applications under Planning Department consideration

We want to assist you in ensuring the property is in full compliance with the Planning Code and that no violations are pending. The Planning Department requires that pending violations be resolved prior to the processing and approving of any new building permits or other applications. Therefore, all applications under consideration by the Planning Department for this subject will be placed on hold until further notice.

Sincerely,

John Rahaim
Director of Planning